

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARGARET KATHLEEN WILSON,

Plaintiff,

v.

CAROLYN W. COLVIN, Commissioner of
Social Security,

Defendant.

Case No. C15-996-JLR-BAT

**REPORT AND
RECOMMENDATION**

Margaret Kathleen Wilson seeks review of the denial of her Supplemental Security Income and Disability Insurance Benefits applications. She contends the ALJ erred (1) by finding that she could perform a job that, as defined in the Dictionary of Occupational Titles (“DOT”), requires more reaching than she could do; and (2) by discounting her credibility. Dkt. 15 at 1. As discussed below, the Court recommends the case be **REVERSED** and **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Ms. Wilson is currently 64 years old, has a bachelor’s degree, and has worked as a copy consultant, sales clerk, housekeeper, apprentice painter, electronic board assembler, nursing

1 assistant, and food service worker.¹ The procedural history of this case is lengthy, as described
 2 in the parties' briefing (Dkt 15 at 2-3; Dkt. 22 at 1-2), and that history is undisputed and largely
 3 not directly relevant to the issues presented in this appeal, with one exception. Under the terms
 4 of a stipulated remand, the ALJ was instructed to *inter alia* "obtain supplemental vocational
 5 expert testimony to reassess the requirements of Plaintiff's past relevant work and/or accurately
 6 identify any comparable counterpart in the Dictionary of Occupational Titles[.]" Tr. 864-65,
 7 874-77.

8 The ALJ's decision under review is dated August 16, 2013, and finds Ms. Wilson was not
 9 disabled between her amended alleged onset date (September 1, 2006) and August 29, 2008, the
 10 date she had been previously found disabled. Tr. 842-54. As the Appeals Council denied Ms.
 11 Wilson's request for review, the ALJ's decision is the Commissioner's final decision. Tr. 821-
 12 25.

13 THE ALJ'S DECISION

14 Utilizing the five-step disability evaluation process,² the ALJ found:

15 **Step one:** Ms. Wilson has not engaged in substantial gainful activity since September 1,
 16 2006, the amended alleged onset date.

17 **Step two:** Ms. Wilson's cervical disc disease, degenerative disc disease of the lumbar
 18 spine, left side bunion, affective disorder, anxiety disorder, pain disorder, and obesity are
 19 severe.

20 **Step three:** These impairments did not meet or equal the requirements of a listed
 21 impairment.³

22 **Residual Functional Capacity:** Before August 29, 2008, Ms. Wilson could lift up to 20
 pounds occasionally, and lift/carry up to 10 pounds frequently. She could stand for no
 more than a total of three hours and could walk for no more than a total of three hours.
 She could sit for a total of seven hours. She could occasionally climb ramps, stairs,

23 ¹ Tr. 16, 622-232.

² 20 C.F.R. §§ 404.1520, 416.920.

³ 20 C.F.R. Part 404, Subpart P, Appendix 1.

ladders, ropes, and scaffolds. She could frequently balance. She could occasionally stoop, kneel, crouch, and crawl. She had an unlimited ability to reach in all directions except for overhead, which was limited to occasional. She was limited to work requiring simple or well-learned tasks. She could have only superficial interaction with the general public.

Step four: Ms. Wilson could perform her past work as a stem mouter as generally performed, and therefore is not disabled.

Tr. 842-54.

DISCUSSION

1. Step Four

The ALJ found that Ms. Wilson had an unlimited capacity for reaching, except that she was limited to reaching overhead on an occasional basis. Tr. 847. The vocational expert (“VE”) testified at the most recent administrative hearing that one of Ms. Wilson’s past jobs corresponds to the stem mouter job described in DOT 725.684-018, 1991 WL 679557. As defined in the DOT, the stem mouter job requires “constant” reaching. 1991 WL 679557. At the most recent administrative hearing, the ALJ did not ask any specific questions regarding the reaching requirements of the stem mouter job, but the VE answered affirmatively that a hypothetical claimant with the restrictions listed in the RFC assessment could perform the job of stem mouter as defined in the DOT (as generally performed). Tr. 1112-13, 1123-24.

At a prior administrative hearing, however, the ALJ asked the VE whether, with regard to the same stem mouter job, the “constant” reaching included overhead reaching, and the VE testified that most of the reaching contemplated in this job was not overhead, and that the overhead reaching required would be categorized as “seldom” or “rare” (up to 10 percent of a workday). Tr. 803-05. The VE testified that this opinion as to reaching was based on his knowledge of the tasks involved in the stem mouter job, because the DOT itself does not differentiate between the type of reaching involved. Tr. 804.

1 In the written decision, the ALJ did not address anything related to the reaching
2 requirements or the VE testimony from the prior hearing, but found simply that the VE
3 “indicated that the [stem mounter] job, as generally performed, does not require the performance
4 of work-related activities precluded by the claimant’s [RFC].” Tr. 853. This analysis falls short
5 of the ALJ’s task on remand: to reassess the requirements of Ms. Wilson’s past relevant work
6 and/or accurately categorize this work according to jobs defined in the DOT. *See* Tr. 874. As
7 acknowledged by the VE (Tr. 1122-23), Ms. Wilson’s written description of her past work as an
8 electronics assembler is internally inconsistent, in that it refers to a job that requires sitting for an
9 entire workday but also mentions lifting and carrying/using ladders. Tr. 182. This discrepancy
10 could and should have been resolved at the administrative hearing via additional testimony from
11 Ms. Wilson.

12 In the absence of clarity regarding Ms. Wilson’s actual job duties as an electronics
13 assembler, it is not clear whether the job she performed aligns with the stem mounter position as
14 defined by the DOT, or whether it would be more accurately described as a composite job. *See*
15 Tr. 1117-21. The ALJ could also have clarified the reaching demands of Ms. Wilson’s prior
16 work, and whether a hypothetical claimant who was restricted to occasional overhead reaching
17 could have nonetheless performed those duties. Unfortunately, this clarification was not sought
18 at the most recent administrative hearing, and must be addressed at yet another administrative
19 hearing.

20 Although Ms. Wilson suggests that a remand for additional proceedings is not the
21 appropriate remedy, in light of the lengthy proceedings that have already transpired in this case,
22 Ms. Wilson is only entitled to a finding of disability if she “is, in fact, disabled, no matter how
23 egregious the ALJ’s errors may be.” *See Strauss v. Comm’r of Social Sec. Admin.*, 635 F.3d

1 1135, 1138 (9th Cir. 2011). Ms. Wilson herself identified outstanding issues that were not
2 resolved in the last round of proceedings (Dkt. 15 at 9), which suggests that a remand for further
3 proceedings would be appropriate. *See Treichler v. Comm’r of Social Sec. Admin.*, 775 F.3d
4 1090, 1101 (9th Cir. 2014) (“Where there is conflicting evidence, and not all essential factual
5 issues have been resolved, a remand for an award of benefits is inappropriate.”).

6 **2. Credibility**

7 The ALJ discounted the credibility of Ms. Wilson’s subjective complaints for multiple
8 reasons: (1) the objective medical findings are not consistent with an allegation of disability; (2)
9 Ms. Wilson’s providers recommended that her physical conditions be treated with conservative
10 treatment only; (3) Ms. Wilson inconsistently reported physical symptoms; (4) Ms. Wilson’s
11 back and neck symptoms improved with physical therapy; (5) Ms. Wilson reported widespread
12 pain “in excess of what the objective evidence reflects because there is no medically
13 determinable impairment to account for the degree or location of this alleged pain”; (6) Ms.
14 Wilson’s mental symptoms improved with medication; (7) Ms. Wilson did not consistently seek
15 mental health treatment; (8) Ms. Wilson worked with the same impairments for years before
16 alleging disability, and did not stop working due to impairments; and (9) Ms. Wilson’s “daily
17 activities are generally consistent with the [RFC assessment].” Tr. 848-50. Ms. Wilson contends
18 that these reasons are not clear and convincing, as required in the Ninth Circuit. *See Burrell v.*
19 *Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

20 **a. Daily Activities**

21 The ALJ’s findings as to Ms. Wilson’s daily activities fail to amount to a clear and
22 convincing reason to discount her credibility, because the ALJ did not explain why the listed
23 activities either contradicted her testimony, or demonstrated that she retained transferable work

1 skills. Tr. 850. Thus, the ALJ did not properly rely on Ms. Wilson's daily activities as evidence
2 that undermines her credibility. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007).

3 **b. Reasons Related to Physical Allegations**

4 The ALJ noted, for example, that although Ms. Wilson reported back and neck pain, the
5 "positive clinical findings were restricted mostly to reduced range of motion and tenderness,
6 which are based on the claimant's subjective report. There are few, if any, findings regarding
7 positive straight leg raise test or compromised neuromotor function." Tr. 848 (citations omitted).
8 The ALJ did not err in considering the degree to which the medical evidence corroborated Ms.
9 Wilson's pain complaints. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) ("While
10 subjective pain testimony cannot be rejected on the sole ground that it is not fully corroborated
11 by objective medical evidence, the medical evidence is still a relevant factor in determining the
12 severity of the claimant's pain and its disabling effects.").

13 The ALJ next noted that Ms. Wilson inconsistently reported symptoms, citing a February
14 2008 physical therapy evaluation that the ALJ found to be inconsistent with "contemporaneous
15 evidence reflecting better range of motion and fewer reported limitations in daily activities." AR
16 at 848-49 (citations omitted). Ms. Wilson argues that this reasoning "ignores or overlooks the
17 fact that pain can wax and wane in severity, from day to day and between medical visits even
18 just a few days apart." Dkt. 15 at 15. This argument is not persuasive, because some of the
19 evidence cited by the ALJ is dated just one day apart: for example, on February 13, 2008, Ms.
20 Wilson reported that walking was one of her recreational interests (Tr. 502), but on February 14,
21 2008, she reported to a physical therapist that moving or do anything was painful, and the report
22 suggests that walking was difficult for Ms. Wilson (Tr. 524). The ALJ also noted that the record
23 showed only "intermittent complaints and findings regarding bunions[,] and Ms. Wilson "made

1 little mention of restrictions associated with bunions during the July 2008 hearing.” Tr. 849.
2 These types of inconsistency in reporting symptoms undermines the veracity of Ms. Wilson’s
3 subjective complaints. *See* Social Security Ruling 96-7p, 1996 WL 374186, at *5 (Jul. 2, 1996)
4 (“One strong indication of the credibility of an individual’s statements is their consistency, both
5 internally and with other information in the case record.”).

6 The ALJ also cited evidence showing that Ms. Wilson’s symptoms improved with
7 physical therapy, but noted that she continued to report widespread pain in all her joints despite
8 the fact that “there is no medically determinable impairment to account for the degree or location
9 of this alleged pain.” Tr. 849 (citing Tr. 510-23, 556). Ms. Wilson’s physical therapist also
10 opined that Ms. Wilson’s “problems seem to be not just physical, but emotional and
11 psychological also.” Tr. 510A.

12 Ms. Wilson argues that while she did experience some improvement with physical
13 therapy, she did not meet all of her goals and still reported pain at a 7/10 level when she was
14 discharged from physical therapy. Dkt. 15 at 12 (citing Tr. 510A). She further argues that her
15 physical therapist’s comments regarding the emotional and psychological aspects to her pain are
16 consistent with her pain disorder diagnosis, and do not undermine her credibility. Dkt. 15 at 13-
17 15. Ms. Wilson cites no medical opinion evidence — beyond the physical therapist’s
18 speculation, in an arena outside her expertise in physical therapy — that her pain disorder caused
19 her widespread joint pain, and thus Ms. Wilson has not shown that the ALJ erred in finding that
20 her reports of pain were not supported by the medical evidence. These unsupported allegations
21 undermine Ms. Wilson’s credibility. *See Thomas v. Barnhart*, 278 F.3d 947, 959 (“Having
22 determined that Ms. Thomas’ subjective complaints of pain were not credible, the ALJ had no
23 need to explore whether Ms. Thomas’ pain was psychologically related, because pain is

1 subjective and depends on the credibility of the claimant.”).

2 **c. Reasons Related to Mental Allegations**

3 The ALJ also found that Ms. Wilson’s ability to work with her mental impairments from
4 August 2004 through 2006 undermined the credibility of her disability allegations, particularly
5 because she stopped working due to a move to Washington, rather than her impairments. Tr.
6 849-50. Ms. Wilson disputes this finding, noting that she sustained an on-the-job injury in May
7 2006 and her physician placed restrictions on her ability to lift, push, and pull prior to the
8 relevant period before the ALJ. Dkt. 15 at 15-16 (citing Tr. 430A, 440). The evidence cited by
9 Ms. Wilson establishes that she had some work-related restrictions in 2006, but not that she
10 stopped working due to her impairments, and thus she fails to show that the ALJ erred in
11 interpreting her work history. *See, e.g., Drouin v. Sullivan*, 966 F.2d 1255, 1258 (9th Cir. 1992)
12 (“She was able to hold two previous jobs with a fair amount of success, and even if those
13 particular jobs are, as she claims, too taxing for her, the vocational counselor testified that she is
14 qualified for thousands of less strenuous jobs.”).

15 Lastly, the ALJ noted that Ms. Wilson’s sporadic mental health treatment also
16 undermines her credibility, because her symptoms responded well to medication and even when
17 she was not taking medication, her symptoms were not so severe as to be debilitating. Tr. 849.
18 Ms. Wilson does not present a specific challenge to this reasoning in her opening brief.

19 Because the ALJ provided multiple clear and convincing reasons to discount Ms.
20 Wilson’s credibility, the inclusion of erroneous reasons amounts to harmless error. *See*
21 *Carmickle v. Comm’r of Social Sec. Admin.*, 533 F.3d 1155, 1162-63 (9th Cir. 2008).

22 **CONCLUSION**

23 For the foregoing reasons, the Court recommends that the Commissioner’s decision be

1 **REVERSED** and the case be **REMANDED** for further administrative proceedings under
2 sentence four of 42 U.S.C. § 405(g).

3 On remand, the ALJ should (1) obtain additional testimony from Ms. Wilson regarding
4 her job duties as an electronics assembler, to determine the physical demands of this past job; (2)
5 obtain additional VE testimony to determine whether Ms. Wilson's past work as an electronic
6 assembler corresponds to a job defined in the DOT; and (3) determine whether a hypothetical
7 claimant with Ms. Wilson's RFC could return to her past work as generally or actually
8 performed.

9 A proposed order accompanies this Report and Recommendation. Any objection to this
10 Report and Recommendation must be filed and served no later than **March 15, 2016**. If no
11 objections are filed, the Clerk shall note the matter for March 18, 2016 as ready for the Court's
12 consideration. If objections are filed, any response is due within 14 days after being served with
13 the objections. A party filing an objection must note the matter for the Court's consideration 14
14 days from the date the objection is filed and served. Objections and responses shall not exceed
15 ten pages. The failure to timely object may affect the right to appeal.

16 DATED this 1st day of March, 2016.

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19 _____
BRIAN A. TSUCHIDA
United States Magistrate Judge